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**MMARS Policy: Procurement/Contracts**

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## **State Grants and Federal Sub-Grants**

### **Executive Summary**

Unless otherwise provided by law, the following policy applies to state departments in all branches of government that disburse state grants or federal sub-grants. A "grant" is defined under [815 CMR 2.00](#) as discretionary and non-discretionary (designated or earmarked) funds of financial assistance provided under contractual terms between a grantor department and a grantee to assist the grantee in the achievement or continuation of a specified public purpose to benefit the general public or a segment of the general public consistent with the grantor department's legislative authorization.

### **Considerations**

A department must determine the appropriate grant disbursement process in accordance with 815 CMR 2.00, the department's legislative authorization, the type of grant funding, the type of intended grant recipient, and the purpose of the grant funding. In addition, a department must comply with state finance law when making payments. Electronic signatures may not be used for grants at this time.

See "Contracts – [Quick Reference – State Grants and Federal Subgrants](#)".

### **Policy**

#### **What departments can provide a grant?**

The administration of grants is governed by 815 CMR 2.00 and applies to agencies and departments in all branches of state government, unless otherwise provided by law. Departments must verify the legislative authorization, account type of proposed funding, and the organizational structure of intended recipients, to determine if expenditures may be properly made as grants under 815 CMR 2.00.

#### **Definition of a "grant"**

A "grant" is defined under 815 CMR 2.00 as discretionary and non-discretionary (designated or earmarked) funds of financial assistance provided under contractual terms between a grantor department

and a grantee to assist the grantee in the achievement or continuation of a specified public purpose to benefit the general public or a segment of the general public consistent with the grantor department's legislative authorization.

### **What is the difference between a Subsidy, a Contract and a Grant?**

A "subsidy" includes funds designated by the Legislature to be made either as a direct payment or transfer of a specified amount to a designated recipient entity, or are designated specifically as direct payments through "Subsidies" or a "Subsidy program". Legislative or funding authority that specifies a "grant", "contract" or that funding is "for a program" does not qualify as a subsidy. Questions regarding whether or not funding authority supports a subsidy should be directed to the Comptroller's legal staff.

A "contract" is used to purchase goods and services to fulfill the operational or administrative needs of a department or to carry out programs or projects. Payments are "fee for service" or "cost reimbursement" made after completion and acceptance of performance. Contractors are seeking compensation for performance in order to generate revenue and profit, and are not in the position of seeking financial assistance to fulfill a public purpose. Contractors also do not generally provide matching funds or resources and are not in the business of providing public services.

Absent certain circumstances, a department may not use a grant to procure or expend funds solely for department operational, administrative or programmatic needs, including consultant services, leases, equipment purchases, construction services, human or social services or other performance based contracts for or on behalf of the department. These types of contracts are not normally financial assistance for a public purpose.

The only exception to this general rule involves joint ventures with other public or "quasi –public" entities, which include entities that are established to support or fulfill a primarily public purpose or specifically to provide services to other public entities (such as state authorities established by M.G.L. c. 29, § 1). These entities may provide services traditionally considered operational or professional services, such as consultant, program management, grant administration, construction management. However, these entities exist primarily to partner with other public entities to fulfill public mandates, rather than functioning in the normal service provider environment.

Often these entities provide matching funds or joint resources to a project that would not be available under a normal contract for goods and services. Grantor departments still have the responsibility to ensure that a grant relationship provides best value as opposed to a service contract, but are encouraged to foster joint ventures with other public and quasi-public entities when fulfilling department mandates.

A "grant" by definition is "financial assistance" under contractual terms for a "public purpose" to benefit the general public or a segment of the general public. "Financial assistance" is intended to enable a grant

**State Grants and Federal Sub-Grants**

recipient to establish, continue or increase a recipient's ability to fulfill a public purpose. Grantees are normally public, quasi-public or private non-profit entities established for a public purpose. Financial assistance is also appropriate when a grantee is in the business of providing public purpose activities and partners with the Commonwealth to fulfill, continue or expand these public purpose activities.

Grants are available to enable departments to utilize and combine available public and quasi-public resources and expertise to achieve similar or related legislative mandates efficiently and effectively, without the added costs and profit margins sometimes associated with use of private contractors. Grants enable partnerships and joint ventures with the commonwealth to fulfill the public purpose legislative mandates of the grantees and the department. Grants may or may not include a requirement for matching funds or a commitment of resources. Sometimes, public or quasi-public entities are the only sources of certain goods or services, have specific skills or resources, or can provide the most cost effective performance. However, even though departments are encouraged to foster partnerships, grants may not be used to circumvent competitive procurements, or as an expeditious method of obtaining services without using a private contractor or complying with other contracting requirements.

Departments are responsible for disbursing grants using best value, fiscal responsibility and other common sense business practices similar to any other contract or department expenditure. In certain instances, a department is required to fulfill a public purpose mandate and is unable to perform the work internally. The department is faced with issuing either a contract or a grant to fulfill that purpose. Sometimes the distinction between a grant or a contract is less clear. In some cases, the type of grantee most qualified to fulfill the legislative mandate is a public or quasi-public entity established specifically to fulfill the type of public purpose the department seeks. In these circumstances, 815 CMR 2.00 encourages departments to take advantage of partnerships and joint ventures with public and quasi-public entities legislatively established to fulfill a public purpose.

It is common sense that the Legislature intended departments to use available public and quasi public resources, rather than automatically requiring a department to seek outside private contractors. 815 CMR 2.00 enables a department to provide grants of financial assistance to public or quasi-public entities, even if the grant performance includes contract-like services (program management, consultant services, etc.) provided the primary goal of the funding is to achieve a public purpose rather than fulfilling an administrative or operational need. There is a greater justification for the use of a grant (rather than a contract) when a grantee commits to providing matching funds, in-kind services or other resources as part of grant performance. In these circumstances the department will have to justify why a grant of financial assistance is more appropriate than a contract, the unique resources that are available under the grant (which would not be available under a contract), and the funding or other benefits that support best value under the grant.

Grants are generally not disbursed to another state department, but may be provided through an Interdepartmental Service Agreement (ISA) under 815 CMR 6.00 if the purpose of the funding is to provide financial assistance to enable another state department(s) to fulfill or continue a specified public purpose to benefit the general public or a segment of the general public consistent with the grantor department's legislative authorization and consistent with the restrictions for using ISAs specified in 815 CMR 6.00 and the ISA policies. Please see Chapter on Interdepartmental Service Agreements and State Finance Law, for these policies.

Grants are considered a "type" of contract. The Legislature may designate or earmark certain funds to be disbursed as "grants". However, funds designated to be expended as a "contract" either in statute, general, supplemental appropriation act, other legislative authority, or funds without a specific designation to be expended as a contract or grant, may be dispersed as a "grant" provided:

1. the purpose of the funding is "financial assistance" for a "public purpose" to benefit the general public or a segment of the general public, and
2. the grant is disbursed in accordance with 815 CMR 2.00 and the department's grant funding authority.

#### **Who can receive a grant? Presumption that Grantees are Public Entities**

Grants to Public Entities may be made from all sources of funds. If the legislative authorization for a grant or financial assistance is silent as to the type of eligible recipients, the presumption will be that the intended recipients will be "public" entities. A "public entity" is defined as a unit of state or local government including a county, municipality, local public authority, school district, special district, district commission, regional government, any agency or instrumentality of government, and state authorities as defined in M.G.L. c. 29, § 1. Since the provision of grants to non-public entities is restricted, a department must determine the organizational structure of intended recipients prior to disbursing grants. If the legislative authorization (statute, general or special law, general or supplemental appropriation act) for a grant or financial assistance is not specific as to the "type" of eligible recipients, the presumption will be that the intended recipients will be "public entities".

Grants to non-public Entities may be made from trust and federal funds without specific legislative authorization. Non-public entities include organizational structures such as individuals, partnerships, and corporations (private, non-profit, quasi-public, corporate body politic). Non-public entities include quasi-public entities and some private, non-profit corporations, even if these entities have been established to fulfill a primarily public purpose. Although these types of entities will still be considered "non-public entities" for the purpose of 815 CMR 2.00, the fact that these entities fulfill a public purpose will be an important factor when justifying the disbursement of a grant to these types of entities absent specific legislative authorization awarding grants to these types of entities. If a department is unsure of the public or non-public status of a potential grant recipient, the department should consult with their legal staff, and if necessary the Legal Bureau of the Office of the Comptroller.

## **Constitutional Restrictions of a Grant of Public Money to a Non-Public Entity**

The Anti-Aid Amendment of the Massachusetts Constitution prohibits “public money or property” from aiding non-public institutions. The Anti-Aid Amendment (Art. 46, § 2, as amended by art. 103 of the Amendments to the Massachusetts Constitution) provides in part that:

*"No grant, appropriation or use of public money or property or loan of credit shall be made or authorized by the Commonwealth or any political subdivision thereof for the purpose of founding, maintaining, or aiding any infirmary, hospital, institution, primary or secondary school, or charitable or religious undertaking which is not publicly owned and under the exclusive control, order and supervision of public officers or public agents authorized by the Commonwealth or federal authority or both...."*

Article 46 was drafted primarily to prohibit the use of public funds for private and parochial schools, and other types of non-public institutions that did not provide a benefit to the general public. “Public money” is interpreted to include appropriated funds (state tax revenue) which can be either operating or capital appropriations. Although the language of Article 46 specifies only “institutions”, the language could be interpreted to extend the prohibition to individuals, partnerships and corporations. Article 46 has been interpreted to allow the expenditure of public funds to non-public recipients solely for the provision of a “public purposes” and not for the direct benefit or maintenance of the non-public entity.

Therefore, absent specific legislative authorization authorizing a grant of state appropriated funds to a non-public entity, 815 CMR 2.00 provides that state appropriated funds *may not* be granted to a non-public entity *unless*:

1. the grant funds are used by the non-public entity solely to cover the actual costs of fulfilling a public purpose to benefit the general public or a segment of the general public, and may not provide a direct benefit or be used for maintenance of the non-public entity not associated with the fulfillment of the grant, and
2. absent specific legislative authorization awarding grant funds to a named non-public entity, or identifiable class of non-public entities, the non-public grantee has been selected through an open public award process as determined appropriate by the granting department in accordance with an authorized exception and the department’s grant funding authority; and
3. the department has included a statement as part of the contract justifying the reasons why the award to the non-public entity supports the efficient, effective and appropriate use of state appropriated funds.

A department’s “legislative authorization” includes general and special laws including statutes, annual appropriation acts and supplemental appropriation acts identifying a department’s legislative mandate, the funding authority for a grant, or both. A department’s “grant funding authority” includes the department’s

legislative authorization, trust language or federal grant award language authorizing the funding of a grant, or the public purpose to be achieved by the department. The grant funding authority may not necessarily state the public purpose to be achieved by the funding. Legislative language is interpreted according to its plain meaning, not what the drafters may have intended, but did not draft. Past practice will not be binding as legislative authorization.

Legislative authorization that supports an award of grant of appropriated funds to a non-public entity will either identify the non-public entity specifically by name or will identify an intended "class of recipients" which includes non-public entities. The following are several examples of classes of intended recipients which include non-public entities: "community centers", "rape crisis centers", "regional tourist councils", "community health centers", "local...councils", "regional emergency services councils", "community based ...centers", etc. In addition, legislation may be interpreted to include non-public entities when the purpose of the grant is capable of being performed only by non-public entities because government entities do not perform the particular public purpose being funded.

Grants to non-public entities may be made from trust or federal funds since these funds do not constitute "public moneys" under Article 26. Even though federal funds are appropriated as part of the General Appropriation Act, and trust funds may include funds received on account of the Commonwealth, Article 26 limits its restriction on the use of public moneys to taxpayer funds (operating or capital appropriations).

### **Open Public Grant Award Process – Overview**

It is presumed that Commonwealth funds will be expended so that no individual(s) or entity (ies) receives an unfair advantage, opportunity or benefit not available to similarly qualified or situated individuals or entities. The Legislature presumes that when funds are not designated to be awarded, paid or otherwise made available to a specific individual or entity, that the funds will be disbursed by a department in an open public manner that supports fiscal accountability, efficient and effective government, and the achievement of the department's legislative mandate. "Open public" means that the department will not unreasonably restrict access to grant awards and will provide reasonable notice of opportunities to apply for grant funds, based upon the unique circumstances of the grant funding authority.

To ensure that grants are disbursed in compliance with law, 815 CMR 2.04 requires an open public award process, "as determined appropriate by the department and in accordance with the department's grant funding authority."

### **Open Public Grant Award Process Exceptions**

A department may not make a grant award, without an open public award process, as determined appropriate by the department, unless one of the following award process exceptions exist:

1. **Earmarked funding.** The grant funding is restricted or “non-discretionary”, which means that the grant funding authority specifies:
  - a. the name of a grant recipient(s), the specific amount(s) of a grant award(s) (or calculation for distribution) and the specific public purpose to be funded or achieved through the grant; or
  - b. the name of a grantee(s), without identifying the amount of the award(s) or the specific public purpose to be funded or achieved through the grant award, or both (meaning that the grant funding is part discretionary and part non-discretionary).
2. **Incidental Grants.** The grant will be disbursed as a one-time, non-recurring Incidental Grant(s) which will not exceed the Incidental Purchase limit established under M.G.L. c. 7, § 22 for the duration of the grant award need for that grantee under the grant funding authority. Incidental Grants are available because the disbursement of small grants through the normal grant process is neither effective or an efficient use of administrative and staff resources.

To maximize available resources, encourage best value and support funding timelines, small simple grant awards may be made as Incidental grants, without a procurement or contract. Incidental grants should not be used if the grant funding or the grant program is recurring from fiscal year to fiscal year. Incidental grants may be awarded without the open public and the contractual requirements outlined in 815 CMR 2.00, provided that the grants meet all other requirements of 815 CMR 2.00. The Incidental grant threshold will be set at the same limit established for Incidental Purchases under [M.G.L. c. 7, § 22](#), or as determined by CTR.

Departments may not split grants in order to disburse grants as incidental grants or to otherwise circumvent procurement or other grant requirements. Departments are required to maintain grant files for all incidental grants. As with any incidental purchase, if the terms of the grant are more extensive than a simple statement of funding, departments should use a contract to memorialize the grant relationship, or in any situation in which the department wants the added protection of a contractual agreement.

3. **Interim Grants.** Interim grants serve a transition function to re-disburse remaining grant funds which can not be expended by a current grantee, or to continue a current grant until new grant procurement process is completed to prevent a lapse in grant performance. Sometimes an existing grant terminates prior to its expiration and remaining grant funds must be re-disbursed in an expedited manner. A department may re-disburse remaining funds to a grantee that responded to the original grant application or solicitation process and was not selected for an award, or the department may re-disburse the remaining funds to a current grantee(s) provided the disbursement is consistent with the original purposes of the grant funding. The department will have full discretion as to the most efficient and effective disbursement of remaining funds. The

grant file should document the reason for the re-disbursement and the methodology or justification for the subsequent awards.

An interim grant may also be used to extend a grant which would otherwise terminate in order to prevent a lapse in grant performance while a grant award process is being completed. The grant award process must have been timely commenced but due to unforeseen delays is incapable of being completed by the termination date of the grant(s). The interim contract amendment to extend the dates of performance, and compensation, must be executed prior to the termination date of the original grant, and may extend performance only for the minimum period necessary to complete the grant award process. This period should not exceed three months. The grant file and the Interim Contract justification should document that the award process was started timely and that the delays were unforeseen and legitimate.

4. **Best Value Grant Award**. In certain circumstances certain grant awards do not meet any of the procurement exceptions, but still present a situation in which conducting an open public process does not support the efficient use of administrative, staff resources or effective grant disbursement. For example, grant funding may not be earmarked, but the pool of eligible grantees is known and the grant disbursement methodology is formula based or otherwise would not change if an application process was conducted. In these limited circumstances, and with solid justification, a department may post on [Comm-PASS](#), or other public posting (such as the department's website), a notice of intent to award a grant(s) which identifies:
  - a. the selected grantee(s)
  - b. the grant amount(s)
  - c. the purpose of the grant funding
  - d. the scope of grant performance to be achieved or funded under the grant
  - e. the duration of the grant; and
  - f. a justification of why the selection of the grantee(s), without an open public process, is necessary, efficient and supports the purposes or timely disbursement of the grant(s). In addition the justification should include why the award is fair and reasonable and in the best interest of the department and the Commonwealth. The posting of the grant application, RFR or other solicitation should be made available for a reasonable time prior to final awards to allow for any responses or challenges. The department may proceed with the awards if no challenges are filed, or if the challenges that have been filed do not merit an alteration of the award process. However, if significant legitimate challenges are raised are presented (which provide reasonable doubts as to the appropriateness of the award process) the department should consider conducting an open public grant application process to address these considerations.

#### **Awards of Non-Discretionary or Earmarked Grant Funding**



Some departments will have grant funding authority providing non-discretionary grants, which means that the Legislature, trust language or federal grant award specifically designates or “earmarks” the grant funds. Grant funds may be designated or earmarked in a variety of ways, such as:

1. specifically identifying grant recipients by name;
2. specifically identifying the “class of recipients” eligible for grant awards;
3. specifically identifying the amounts to be awarded to a grant recipient or class of recipients.  
Amounts may be specified by a dollar amount or a formula, such as a formula that awards are based upon population;
4. specifically identifying the method of grant disbursement or the criteria for eligibility for a grant award (i.e., based upon need, or based upon the grantee exhibiting certain characteristics, having certain qualifications, or a recipient willing to provide matches of funding or resources);
5. specifically identifying the details of the public purpose to be funded or achieved through the grant (i.e., funding to provide additional training resources at community based employment centers.)

The more specifically the Legislature earmarks or designates grant funds, the less discretion a department will have when dispersing the grant funds. For example, legislative authorization which identifies the specific name of a grant recipient, the specific amount of a grant award and the details of the public purpose to be funded or achieved through the grant will be considered “non-discretionary” grant funding which provides the department with little to no discretion about how the grant will be disbursed. However, the designation also satisfies the department’s obligation to conduct an open public award process, which saves on staff time and administrative resources.

If the grant funding authority names a specific grantee and not the specific amounts to be awarded, or the public purpose to be achieved, the grant funding will be considered “discretionary” and the department will have some discretion to determine the grant amounts and details of the public purpose to be achieved by the grant. The open public award process is achieved by communicating to recipients how to apply for grant amounts, and how the department will evaluate and award grants to the identified grantees.

#### **Awards of Discretionary Grant Funding -Department Determines Award Process.**

Under 815 CMR 2.00, a department determines the most efficient and effective notice, award and disbursement process for a grant or grant program, based upon the grant funding authority and the type of eligible grant recipients. The department is ultimately responsible for, and is in the best position to make, the appropriate business decisions regarding the most efficient and effective use of grant funds. Therefore, substantial deference will be accorded department decisions regarding grant disbursements absent clear abuse of discretion, or an intentional or negligent disregard for grant regulations, policies and procedures.

The following are examples of possible award and disbursement practices that a department might implement for a particular grant or program:

- When the number of eligible grantees is known and identifiable, or there is a limited number of potentially qualified, eligible or interested grantees, a department may determine that a grant application is most efficiently provided through email, fax or mail directly to the known potential grantees, rather than through a posting or publication. After selection, the department would post a notice of intent to award posted on Comm-PASS, or other public posting following selection, to confirm an open and public process.
- When an eligible grantee(s) has been specifically identified in the grant funding authority, but the specific grant award amount(s) has not been specified, or the Legislature has identified that grant funds may be disbursed “not to exceed” a specified amount, or the amount(s) has been specified but the details of the public purpose to be achieved have not been identified, a department may determine that distributing a grant application directly to the identified recipient(s) in order to solicit a proposed plan or budget breakdown for how the grant funds would be used, would be the most efficient and effective process to evaluate either the amount of grant funds to be awarded, how the grant funds may be used, or both.
- When a class of eligible grantees has been specifically identified in the grant funding authority (such as cities and towns) but the specific grant award amount(s) have not been specified, and there may be insufficient funding to provide grants to all eligible recipients, or the department determines that providing grants to fewer recipients would be a more effective use of the department and grant resources, a department may determine that a formal posting of a grant application on Comm-PASS (listing the criteria for how grantees will be selected and grant amounts awarded) is the most efficient and effective process to provide documentation of an open and public award process, even though a formal posting is not required.
- When eligible grantee(s) are not known (often when a department has new grant funding) a department may determine that a formal posting of a grant application on Comm-PASS or other public posting, provides (department website) the broadest outreach to potential applicants, and provides documentation of an open and public award process, even if a formal posting is not required.

NOTE: Posting on Comm-Pass is the preferred public posting process, although advertisements in local or regional newspapers, trade journals and other postings (such as on the department’s website) are also acceptable.

### **Process Requirements for Awards of Discretionary Grant Funding**

As specified above, absent an award exception, discretionary grant funds shall be disbursed through an open public award process, as determined appropriate by the department, which supports the efficient and effective use of grant funds to fulfill the public purpose of the grant funding authority. The process under 815 CMR 2.00 is similar to the process under 801 CMR 21.00 with exceptions noted. The term “grant application” shall also be interpreted to include any other forms of solicitation documents that may be used instead of a grant application, such as a Request for Response (RFR), Request for Qualifications

(RFQ) or Request for Interest or Information (RFI). The following terms shall apply even if not included as part of the grant solicitation or application process:

1. Distribution of grant application. The grant application may be distributed in any manner determined by the department to provide reasonable notice and opportunity to potential eligible grant recipients of the availability of grant Funding, unless a formal public notice is required under 815 CMR 2.04.
2. Contents of grant application. A grant application for each grant or grant program should identify the details of the grant or grant program and the terms of the grant. The grant requirements should reflect criteria reasonably designed to identify an eligible grantee(s) and may not be drafted to target a pre-selected grantee or otherwise unreasonably limit eligible grantees without a legitimate business need or justification. The grant application should include but is not be limited to the following:
  - a. the public purpose to be funded or achieved through the grant;
  - b. the scope of performance that will be eligible for grant funding;
  - c. the type, class, number or qualifications of potential recipients that will be eligible for a grant award (unless grant recipients are already named or specifically identified in the grant funding authority);
  - d. the anticipated amount of available grant funds (if grant amounts are not already specifically designated by grant funding authority). If grant funding authority specifies the award of a grant "not to exceed" a specified amount, the grant amount shall be determined through the award process;
  - e. whether the grantee is required to provide matching funds, in-kind resources or performance if grant funds are awarded;
  - f. the process for submission of invoices or requests for payment, including the timing of invoice submission, format and reporting or supporting documentation that will be required to verify or support payment;
  - g. the anticipated payment methodology for the distribution of grant payments (i.e., whether the payments will be based upon cost reimbursement, periodic scheduled installments or lump sum payments) or other payment distribution which supports fulfillment of the grant purposes and supports state finance law and sound fiscal management, and whether grant funds must be segregated from other grantee funds and expenditures separately documented. See Compensation section below.
  - h. for grants awarding Capital Funds, the requirement that grant funds be disbursed on a cost reimbursement basis, meaning that the grantee gets reimbursed for funds it has already expended. A grant may not provide that payments will be paid in lump sum amounts based

upon need unless the amounts can be received and expended by the grantee within 60 days in order to avoid arbitrage. Capital funds received by a grantee must be held in a segregated non-interest bearing account. Departments that have questions regarding these restrictions should contact the Comptroller's legal staff. See Compensation section below.

- i. reporting requirements that will be required to verify grant performance and the appropriate use of grant funds;
- j. ownership of equipment or other resources paid for with grant funds;
- k. other state or federal legislative, regulatory or policy requirements;
- l. the duration of the grant or grant program, which shall be subject to appropriation or the availability of sufficient non-appropriated funds under the grant funding authority;
- m. any information or documentation that a grantee must provide to be considered eligible for a grant or to determine the amount of a grant award, including, but not limited to:
  - i. a proposed budget and scope of performance for how grant funds will be used;
  - ii. an executed Commonwealth Terms and Conditions (unless a potential grantee is registered in MMARS as having one already executed and on file);
- n. required attachments;
- o. an IRS W-9 Form for new grantees that have not previously received grant or contract payments from the Commonwealth;
- p. certification of tax compliance (non-public entities);
- q. a listing of authorized signatories who will be authorized to legally bind the grantee, including the designation of a Contract Manager who will be responsible for management of grant performance; See Attachments – Contractor Authorized Signatory Listing.
  - i. any instructions for submission of a completed grant application and a deadline date for submission.
  - ii. the evaluation criteria that will be used for grantee selection and grant award amounts (unless the recipients or amounts are already specifically identified in the grant funding authority);

3. When a formal public notice of grant is required. A formal public notice of a grant application will be required under 815 CMR 2.00 whenever a department plans to disburse discretionary grant funding of state appropriated funds which do not specifically identify the grant recipients to receive funding **and**:

- a. the total anticipated value of any **single** grant award may exceed \$50,000 for the duration of the grant or grant program, or
- b. the pool of potential eligible grant recipients includes, or may include, non-public entities, or
- c. the total available funds for disbursement in any fiscal year exceeds \$200,000.

4. Methods of formal public notice. A formal public posting of grant availability and posting of selection results may be made as determined appropriate by the department by either:
  - a. posting on Comm-PASS (preferred method);
  - b. posting in the Central Register;
  - c. publishing a notice in a newspaper or other publication reasonably targeted to reach the eligible grant recipients or
  - d. any other method of publishing or posting that will provide reasonable public notice to potential grant recipients of the availability of the grant and the final grant results (which may include the department's website).
5. Grant application amendments. A department may at any time prior to the execution of a contract and without penalty, amend a grant application or change the grant requirements, scope of performance or budget, upon notice to potential grantees in the same manner as the original grant application was distributed.
6. Grant application cancellations. A department may for any reason and at any time prior to the execution of a contract and without penalty, cancel a grant application and reject grant applications upon notice to potential grantees in the same manner as the original grant application was distributed.
7. Corrections or clarifications to a submitted application. The department shall determine whether to allow correction of minor informalities in a grant application response. Minor informalities are matters of form rather than substance and include clerical errors or minimal or insignificant mistakes that can be corrected without unfairly prejudicing other potential grant recipients. Clarifications are explanations of what is stated in a response. No correction or clarification should be permitted which provides an unfair advantage to any potential grant recipient for a grant award.
8. Late submission of grant application. The department will have full discretion to determine whether or not to accept a late submission of a grant application, and whether acceptance of the late submission would be unreasonably unfair to other potential grantees that submitted timely applications. The justification for accepting a late submission must be maintained as part of the grant file.
9. Evaluation of grant application. Departments shall review all grant applications to determine whether minimum submission requirements have been met. Departments may continue evaluating only those grant applications meeting these requirements. Evaluations shall be based upon the criteria or eligibility requirements identified in the grant application.
10. Disqualification of grant application. A department may disqualify or reject a grant application for any reason, without penalty, including but not limited to:

- a. grant applications that are received after the deadline for submission specified in the grant application (See "Late submission of grant application" above);
- b. failure of a grant application to meet, address or comply with material requirements in the grant application, including instructions for submission, content or format;
- c. grant applications which indicate collusion or unfair trade practices by one or more potential grantees agreeing to act in a manner intended to avoid or frustrate any of the provisions of 815 CMR 2.00 or any other general or special law or regulation;
- d. grant applications submitted by a potential grantee or which identifies a subcontractor, who is currently subject to any state or federal debarment order or determination. (However, if the identified sub contractor is replaceable without a material effect on the bidder's response, the bidder may be given the opportunity to select another subcontractor prior to the execution of a contract.);
- e. a potential grantee:
  - i. is intentionally or unreasonably delaying the timely execution of a Commonwealth Terms and Conditions or the Standard Contract Form or is unable to execute timely even for reasonable delays;
  - ii. conditions execution of a Commonwealth Terms and Conditions or the Standard Contract Form upon the department's acceptance of additional material or amended contract terms and conditions or specifies that the grant application is "non-negotiable", "all-or-nothing" or that there can be "no substitutions",
  - iii. negotiates in bad faith;
  - iv. refuses to execute a Commonwealth Terms and Conditions or the Standard Contract Form;
  - v. demands that the department execute the potential grantee's contract form instead of a Commonwealth Terms and Conditions or the Standard Contract Form, or
  - vi. is unable to reach final agreement on contractual terms with the department within a reasonable time as determined by the department

11. References. A department shall have the right to request references, verify references or consider any written references submitted to the department, at any time during the grant award process and at any time during the period of the grant.

12. Debriefing. The department shall have the sole discretion of whether or not to provide an opportunity for non-successful grantees to request a debriefing to be conducted after Contract execution. Comparisons with other grant applications will not be made during a debriefing. If a grant application is silent as to an opportunity for a debriefing, the department shall have the option to grant or deny a debriefing and may limit the number of debriefings granted.

13. Notification of Selected Grantees. A department shall determine the timing and method of notifying grantees of their selection for a grant award and Contract negotiation. In addition to the notice to grantees, the results of final selection must also be publicly posted or otherwise available for review upon request. If a grant solicitation was posted on Comm-PASS or the department's website, the results of the solicitation must also be posted.
14. In order to support fulfillment of the open public award process, whenever grantee selection has been made through any process other than an open public award process as outlined above (excluding incidental grants and earmarked grants) the department must post on Comm-PASS or other public posting, a notice of intent to award a grant(s) which identifies:
- a. the selected grantee(s);
  - b. the grant amount(s);
  - c. the purpose of the grant funding;
  - d. the scope of grant performance to be achieved or funded under the grant;
  - e. the duration of the grant; and
  - f. a justification of why the selection of the grantee(s), without an open public process is either necessary, inefficient or would not support the purposes or timely disbursement of the grant(s), and why the award is fair and reasonable and in the best interest of the department, the grant funding authority, and the Commonwealth. The department will be required to respond to any legitimate challenges to the planned award made within 5 business days of the notice of award, including providing and posting additional information to justify the award. However, the department is required only to respond to challenges that identify a deficiency in the posting of the proposed award and may not merely be a disagreement as to the grantee selected. Provided the department has identified a legitimate business need, and a sufficient justification for the non-competitive award that supports best value, the department may proceed with the award.
15. Press Conferences or New Release Restrictions. No potential grantee shall make any press conference, news releases or announcements concerning its selection or non-selection for a Contract prior to the grantor department's public release of said information or prior to the written approval of the grantor department.

**Contract Award Letter is not legally binding.**

The identification of a grantee in a notice of grant award creates no contractual or legal obligation for a department or the State. A grantee may not rely on an award letter, or any other verbal or written assurances from any source, to begin performance or otherwise incur obligations (signing contracts, hiring personnel, purchasing services or goods, etc.) for which the grantee anticipates funding through the grant. Grant performance for which a grantee seeks compensation may not be delivered outside the

scope of a properly executed grant, and a grantee assumes the risk that funding will not be available for any costs incurred

### **Commonwealth Terms and Conditions and Standard Contract Form.**

A department cannot issue grant payments until the contractual documents outlined in 815 CMR 2.00 are properly executed and filed in accordance with policies and procedures issued by the Office of the Comptroller.

An authorized signatory of a grantee and the department must execute a [Commonwealth Terms and Conditions](#) and a [Standard Contract Form](#) issued by the Office of the Comptroller for grants awarded under 815 CMR 2.00, absent prior written approval from the Office of the Comptroller that circumstances exist supporting the use of a different contract form or no contract. Please see policy chapter on “State Finance Law and General Contract Requirements” under section “**Contract Form Exceptions**” for the circumstances which support alternative contract forms or no contract form (such as alternative contracts for student interns). See also, Policy Chapters “Department Head Signature Authorization” and “Electronic Signatures in MMARS” which apply to grants as well.

The Commonwealth Terms and Conditions is signed only once by a grantee, is filed with the Office of the Comptroller and is incorporated by reference into any Standard Contract Form executed by the grantee and any state department. Departments must check the MMARS vendor/customer file to determine if a grantee has executed and filed the Commonwealth Terms and Conditions and should not required grantees to resign this document if previously filed.

See Policy Chapter “Contracts – State Finance Law and General Contract Requirements”

### **Contract Attachments**

Contract attachments will be determined by the type of procurement conducted for a grant. The following sections identify the key contract components. The record (original) copy of a contract is maintained by the department in a grant file. See [Records Management](#) section below.

### **Open and Public Awards**

- Grant Application, Request for Response (RFR); RFR COMM-PASS close out screen printout or other grant solicitation;
- Grantee Response to Grant Application, RFR or other solicitation;
- Any additional terms (such as reporting requirements) that are not included in the application or response that are negotiated by the parties.

### **Procurement Exceptions:**



- Supporting documentation justifying procurement exception with a description of the grant selection process, including any posting of a notice of intent to award, and why a competitive selection was not performed and a justification of the grantee selection
- Scope of performance and budget.

**Other attachments:** (required for all grants)

- Contractor Authorized Signatory Listing (all);
- Other attachments required by department or procurement;

**Other Contract Forms:** (required for all grants)

- [IRS Form W-9](#) if contractor not listed as vendor in the MMARS Vendor/Customer file
- [Electronic Funds Transfer \(EFT\)](#) form (unless a single payment or EFT presents hardship to grantee);

**Scope of Performance, Budget and Reporting Requirements**

A grant must identify the amount, duration and scope of the grant, and applicable fiscal or programmatic reporting requirements for documenting grant expenditures or performance, and the grant compensation or budget. This information may be included as part of the grant application, RFR, as a separate scope of performance and budget or as additional terms negotiated as part of the grant. The grant scope and budget should include:

- the amount of the grant,
- the anticipated payment methodology,
- the anticipated timing of distribution of grant payments and
- whether the payments will be based upon cost reimbursement, lump sum, or periodic installments.
- The grant should also indicate:
  - what performance will be eligible for reimbursement or funding,
  - what documentation is necessary to support payments under a grant;
  - what reporting is required (periodic and final reports) to document that grant performance has been completed or other actions have been initiated or completed to trigger grant payments.

**Grant Effective Start Date.**

Notwithstanding verbal representations by the parties, or an earlier start date stated in the Standard Contract Form, the effective start date of a grant shall be the latest of the following dates:

- a. the date the Standard Contract Form was executed by an authorized signatory of the grantee;
- b. the date the Standard Contract Form was executed by an authorized signatory of the department;
- c. the date the Contract received Secretariat or other approvals required by law or regulation, if applicable; or
- d. a later date specified by attachment to the Standard Contract Form.

The Standard Contract Form does not have a blank space to add a specific start date since the dates of execution listed above generate the effective start date. Unless specifically authorized by general or special law, an earlier start date cannot be added by attachment and will be superceded by the signature dates above. A legislative authorization for grant funding or earmarking of funds does not create authorization for a grantee to incur any obligation or begin performance under a grant. Departments and grantees must date the contract as of the date of their actual signature and may not pre-date or retroactively date a contract to effect an earlier start date.

Prior to submitting a MMARS encumbrance document to final status, the Administrator is responsible for verifying the correct effective start date based upon the contract documentation. Submission of the document to final status acts as the department head's certification that MMARS reflects the legal effective start date based upon the contract documents. Departments must look at the execution dates of the contract and approval dates and calculate the start date when entering and reviewing a MMARS encumbrance document and may not routinely enter "July 1<sup>st</sup>" as a default date.

For example, a grant executed by the grantee on June 29, 2004 by the Grantee and July 5, 2004 by the department must use July 5, 2004 as the effective start date, unless a later date is specified by attachment. A grant executed by the grantee on May 31, 2004 and the department on June 1, 2004 with no later date specified by attachment would have a June 1, 2004 start date, subject to grant funding authority. If the funding for the grant is fiscal year 2005 funding, contract performance could not start until July 1, 2004 or until funds are appropriated (GAA or interim budget) and the contract effective start date should be entered as July 1, 2004.

Grants may be executed for multiple-fiscal years even if the grant program is funded annually through the General Appropriation Act (GAA). All grants are subject to appropriation by the Legislature and an annual award of grant funds by the grantee. Grantees may not incur obligations in anticipation of either a grant award or appropriation unless the grantee would be making performance anyway and has sufficient other non-grant funding to support the performance.

In the event grant funding is not available, either because the funds were not appropriated, the grantee was not offered a grant award, or the amount of an anticipated grant was reduced, neither the grantor department nor the Commonwealth will be under any obligation to make payment for such performance, even if a grant award was made. Since all grants are subject to appropriation, a multi-year contract for a grant merely enables the grantor department to establish the grant paperwork for the anticipated grant period, instead of through an annual grant execution process. The multi-year contract creates the grant "shell" of terms and conditions for performance "subject to" appropriation and award. The contract does not in any way create a guarantee or entitlement to funding during the period of the contract unless and until funds are appropriated, allotted and awarded to the grantee under the contract.

Department head or authorized signatory wet signature and date on grant or amendment prior to start of performance or contemporaneously with the need for an amendment. ***Electronic signatures cannot yet be used for contracts or amendments.*** Secretariat approval or signoff may be required for executive departments in a secretariat. This requirement is a purely internal administrative step that should be completed prior to contract execution. The Office of the Comptroller will not verify secretariat signoff as part of pending review to process grants which exceed the department's transaction delegation limit, nor as part of more in depth quality assurance reviews. Internal controls should be implemented to ensure that the secretariat signoff process does not unduly delay the contract execution process.

#### **Department Head Signature Authorization and Electronic Signatures for MMARS documents**

**Electronic signatures apply only to MMARS transactions.** Electronic signatures ***may not*** be used for grants or amendments. Unless approved in advance by the Comptroller, the use of electronic signatures is not authorized for use in the underlying supporting documentation for MMARS documents, such as contracts (including grants, Interdepartmental Service Agreements (ISAs), grants, leases, construction contracts) settlements and judgments, and any other legal obligation or document currently requiring a wet or live signature.

Electronic signatures for these types of documents will be authorized when Commonwealth policies have been developed to ensure that the identity and authority of signatories can be authenticated and these documents can be memorialized as permanent records capable of being preserved and accessed in accordance with the requirements of the Supervisor of Public Records, the Records Conservation Board and in addition for executive departments, the Information Technology Division in accordance with M.G.L. c. 110F.

#### **Electronic signature and Department Head Authorization of MMARS documents**

With the implementation of the MMARS accounting system the Office of the Comptroller is aligning Electronic Security with Department Head Signature Authorization (DHSA) in fiscal year 2005 in order to take advantage of electronic signatures for MMARS processing. Every MMARS action must be confirmed/authorized by the department head or an authorized signatory. Department head authorization can be accomplished in one of two ways:

- **Administrator Security with DHSA.** If the employee (Administrator - system processor) who submits a document to final status is a department head authorized signatory, the data in the MMARS system will be sufficient documentation. What appears in MMARS will be the record copy of the document.
  - ***Recording Doc Id on all supporting documentation.*** Since there is no paper copy required for the MMARS document the department will be required to include the MMARS Document Identification number (Doc ID) on all supporting documentation to "match" the supporting documentation with the electronic record of the MMARS document which

will reside on MMARS. Recording the doc id on all supporting documentation can be accomplished by entry of the MMARS doc id on the first page of the supporting documentation, or by entering the doc id on a **MMARS Document**

**Authorization/Records Management Form** which will act as the cover sheet to the supporting documentation for records management purposes.

- **Administrator Security without DHSA.** If the employee (Administrator - system processor) who will be submitting a document to final status is not a department head authorized signatory, the Administrator must obtain a live (“wet”) signature from an authorized signatory approving the document **PRIOR** to submitting the document to final status in MMARS.
  - ***Review of document and supporting documentation.*** Since a department head is required to authorize the official record of a MMARS document, which is what **actually appears in the MMARS system**, departments must ensure that whoever authorizes the document has reviewed the document and related supporting documentation prior to authorization.
  - ***Written authorization.*** The written authorization may appear on a screen-print of the document as entered and validated, but prior to final submission, or on a **MMARS Document Authorization/Records Management Form** prescribed by CTR, to capture the prior authorization for documents.
  - ***Filing of authorization with supporting documentation.*** Authorization documentation must be kept on file at the Department along with the record copy of other supporting documentation related to the MMARS document. See **Records Management** below.

#### **What does electronic signature of a MMARS document mean?**

When a Department electronically submits a document to final status in MMARS, the department head is certifying to the Comptroller that the individual, on behalf of the department head, understands that their UAID (universal access identification) is being recorded for any entries made in the MMARS system **and that** that individual certifies under the pains and penalties of perjury that:

- it is their intent to attach an electronic signature approval and date to the MMARS document, **and that**
- they are either an authorized signatory of the department head who is authorized to approve the MMARS document as part of the Department Internal Control Plan, **OR**
- that the document they are processing and any supporting documentation have been approved by an authorized signatory of the Department head, secretariat and any other required prior approval (including secretariat signoff if required) and a copy of these approvals are available at the Department referencing the MMARS document number, **and that**
- any expenditure or other obligation is supported by sufficient available legislatively authorized funds and is in accordance with the Department’s enabling legislation and funding authority; **and that**

- the MMARS document and any underlying supporting documentation are accurate and complete and comply with all applicable general and special laws, regulations and policies including public record intention and disposal requirements.

Day-to-day communications between a grantee and the department can be sent electronically but should be printed and maintained in the grant file until electronic filing standards for such documents have been established. Any formal communications, changes or other communications which affect material terms of the grant must be memorialized in a formal amendment. See Policy Chapters “Contracts – Amendments, Suspensions and Terminations” and “State Finance Law and General Contract Requirements”.

Please also see policy chapters on “**Department Head Signature Authorization**” and “**Electronic Signatures for MMARS documents**” for additional information.

### **MMARS Transaction Delegation**

Transaction (MMARS document) delegation enables departments to process MMARS documents for grants within certain dollar limits to final status without prior review by CTR, provided the department complies with identified laws, policies and procedures and the use of specified Contract Forms.

CTR conducts comprehensive Quality Assurance (QA) reviews on selected grants. Grants are subject to post audit by the Office of the State Auditor, the Inspector General’s Office, the State Ethics Commission and the Office of the Attorney General.

See Policy Chapter “Delegation of MMARS Document Processing” for additional information.

### **Grant Payments and Compensation**

Payments must be made in accordance with the Contract and the Commonwealth Bill Payment Policy. Standard payment is EFT within 30 days of receipt of invoice or payment request, unless periodic payments are authorized under grant. EFT will be required for all grantees unless a grantee can demonstrate a hardship. Payments may be made as lump sum, periodic installments or cost reimbursement in accordance with the grant and funding authority. A grant should identify the number and timing of installments and invoice, supporting documentation or reporting requirements. A grant should also identify what costs are eligible for reimbursement. Payments of current fiscal year grant funds must be disbursed within current fiscal year.

A grantee shall only be compensated for performance or costs accepted or deemed eligible by the department in accordance with the specific terms and conditions of a properly executed Standard Contract Form (the “grant”). The existence of a grant award letter or even a legislative earmarking of grant funds creates no entitlement to grant funding. A department is under no legal obligation to compensate a grantee or to obtain additional funding for any costs or other commitments that are incurred by a grantee outside of the scope of a properly executed grant. Therefore, grantees assume the risk if performance

begins or obligations are incurred based upon oral or written representations, assurances of funding or legislative appropriations, without an executed contract.

Unless otherwise provided by law, all grant payments are subject to appropriation pursuant to M.G.L. c. 29, § 26, § 27 and § 29, or the availability of sufficient non-appropriated funds for the purposes of the grant. Grant payments may be subject to intercept pursuant to M.G.L. c. 7A, § 3 and 815 CMR 9.00. Grant payments are not subject to late penalty interest under 815 CMR 4.00.

Extra care must be used when grants involve Capital Funds. Capital grants must include the requirement that grant funds are either received on a cost reimbursement (the grantee invoices for the costs of performance when rendered) or if lump sum amounts are made, the fund received by a grantee must be held in a segregated non-interest bearing account and must be expended by the grantee within 60 days in order to avoid arbitrage. Departments that have questions regarding these restrictions should contact the Comptroller's legal bureau.

When negotiating grants, departments are required to identify a budget detailing the expenditures, costs, obligations and other performance that will be eligible for reimbursement or funding under a grant. Since grants are financial assistance and not tied directly to a fee-for-service, grant distribution can take a variety of forms based upon the grant program and the needs of the grantee. Therefore, dates of services for payments are not tied to the start of performance like a traditional fee-for-service contract. Dates of service reflect payment "due dates" which may be upon execution, listed installment dates, other periodic payments dates, or disbursement dates based upon grantee financial needs. The grant should identify what performance or costs are eligible for reimbursement. The grant should identify how funding will be provided, which may include the following:

- **Lump Sum Payments:** single or multiple lump sum payments based upon a formula, legislative earmarking or a negotiated award;
- **Periodic Installments:** multiple payments at scheduled intervals or on specific dates to enable the establishment of new, or the continuation of current, grant performance or programs;
- **Cost reimbursement:** payment for completed grant performance or for obligations authorized to be incurred by the grantee or obligations or costs deemed eligible for reimbursement under a grant. The grant must specify whether, after grant execution the grantee:
  - first completes performance and pays for grant performance or obligations from other funds of the grantee and then seeks cost reimbursement under the grant; or
  - first complete performance and then requests reimbursement for eligible performance or costs in order to make payments; (when making a payment, the dates of service would be the dates, after contract execution, that the grantee completes and confirms delivery of performance in order to request reimbursement.)
  - the grantee documents that costs eligible for reimbursement have been incurred and requests cost reimbursement.

Departments must establish the most efficient, cost effective and fiscally responsible method of grant disbursement. Single lump sum payments should not be made unless legislative language authorizes a lump sum transfer or payment or unless the circumstances require the funds at the beginning of the grant to establish a program, or there are extenuating circumstances that support the payment of the grant upon execution.

Otherwise, absent an identified need or special circumstance, disbursement at the beginning of the grant, prior to any grant performance, or prior to obtaining documentation that eligible costs or obligations have been incurred supporting the funding, creates a risk that the funds may not be used for authorized grant purposes unless the department exercises careful oversight and requires routine reporting of expenditures.

The department must balance the financial needs of the grantee with the fiscal responsibility of ensuring funds are properly used. In some circumstances, grants will have multiple payment models, such a lump sum payment upon execution of the grant or at the beginning of the grant program (often considered "seed money" to get a program or grant work started) and then periodic installments or cost reimbursement periodically throughout the grant period. Departments are free to establish whatever compensation structure is appropriate for the grant program in accordance with the grant funding authority.

As part of the budget or grant application, the department should specify whether or not invoices must be submitted and what reporting, supporting documentation or justification must be submitted to support compensation under the grant. For lump sum and periodic installments scheduled as part of the budget, invoices are not required. The schedule of payments in the budget is used in lieu of invoices to support entry of the period installments or payments. Periodic payments should be scheduled in the state accounting system to ensure timely payment of grantees in accordance with the grant terms. Although recurring payments provide an efficient method for regular payments, the department is responsible for reconciling the payments made with the grant performance made. Cost reimbursement grants can require invoices and documentation of eligible costs.

Grant payments follow state finance law similar to any other contract. All grants are subject to appropriation and allotment and a grant creates no entitlement to funding, even if there is legislative language authorizing a grant to a specified entity for a specified amount. A legislative designation (earmarking) of funds merely alleviates the need for an open and competitive application or disbursement process for the grant, but does not alleviate the contracting requirement for the grant under 815 CMR 2.00.

A legislative designation (earmarking) creates no authorization for a grantee to commence performance for which grant funding is anticipated prior to execution of a contract designating what performance is eligible for grant funding or reimbursement and when that performance can be made by the grantee. Therefore, a grantee acts at their peril if performance begins or obligations are incurred for which grant funds are sought, prior to execution of a grant authorizing compensation for eligible grant performance.

Departments should not make final payment to the grantee until all reports, unexpended program income and other deliverables required under the grant agreement have been submitted to the department in acceptable form, but in no event later than 45 days following the end of the fiscal year, unless the department has legislative authority to carry over the funds into the next fiscal year for payment (i.e., extension of disbursement authorized by the administration until September 15<sup>th</sup>, prior appropriation continued, or a continuing account). Departments may include language in a grant for a hold back of a percentage of grant payments (referred to as "retainage") from each grant payment or at the end of a grant to ensure grant performance. See Policy Chapter "Contracts Retainage Policy" for additional information.

When departments are granting federal funds (often referred to as "pass-through" funds) even though the department does not expend the funds for its own use, the department still remains responsible for sufficient oversight of the funds to ensure that the funds are spent in accordance with federal grant requirements. The same oversight responsibility applies regardless of the type of funds granted by a department, even if the funds are earmarked to another entity and considered pass-through funds.

### **Overpayments**

Payments may be made only for authorized expenses or grants costs. The department shall have the right to recoup or offset overpayments made for grant performance. A grantee shall have no entitlement to grant funds and must be able to document that performance was completed in accordance with the terms of the grant or that payments reflect authorized costs or expenses.

In the event an overpayment is discovered within the fiscal year in which the related payment was authorized, the grantee will be required to make repayment of the overpayment or the amount may be used to offset remaining payments during the current fiscal year (including the accounts payable period during July-August of a fiscal year), or may be used to offset additional grant related costs or expenses consistent with the purposes of the grant, as negotiated with the department.

Overpayments made in one fiscal year may not be used to offset grant costs or payments in a subsequent fiscal year, unless the funding authorization supports a continuing account (trust, capital or federal), the grant authorizes that funds maybe carried over into another fiscal year, as determined in the grant application, or upon written amendment or approval by the department in accordance with state finance law requirements.



For non-continuing accounts or for any funding for which the funding authorization for the grant has expired, overpayments discovered after the close of the accounts payable period of the fiscal year in which the funds were authorized for payment should be repaid to the department and deposited in the General Fund or the appropriate fund as determined by the Office of the Comptroller and may not be used to offset grant payments in a subsequent fiscal year, or to be used for another grant program unless otherwise authorized.

Records of overpayments, recoupment or offset must be maintained by the department in the grant file and will be subject to quality assurance and audit review.

### **Contract Back out Policy**

Under construction.

### **Amendments**

The department can negotiate a change in any element of contract performance or cost identified in the grant application, RFR or the grantee's response which results in lower costs, or a more cost-effective or better value grant result than was presented in the grantee's original proposal. Changes can be negotiated which result in overall increased costs, provided the overall result is the best value or a "better value" than was originally proposed. In summary, as long as the subject of negotiation results in a better value within the scope of the original grant application or contract than what was proposed by the grantee, it is negotiable. The same best value standard applies to contracts and interdepartmental services.

See Policy Chapter "Contracts – Amendments, Suspensions and Terminations" for detailed information regarding amendments.

### **Grant Management and Close Out**

Even if not specified in a grant, under 815 CMR 2.00 grantees are expected to:

1. maintain accurate, current and complete records and provide disclosure of all financial activities related to a grant in accordance with Generally Accepted Accounting Principles (GAAP);
2. maintain records that clearly identify the source and application of all funds used for the purposes described in the approved grant application. These records shall, at a minimum, identify obligations, un-obligated balances, assets, liabilities, outlays and program income related to implementation of a grant, and document the fulfillment of any requirements for the expenditure of matching funds or the provision of in-kind services or resources;
3. implement effective internal and accounting controls to ensure a system for safeguarding all grant funds, property and assets for the life of the grant and ensure that these are used solely for authorized grant purposes.

4. if a grant awards capital funds, ensure that funds are not accepted unless the funds will be deposited into a non-interest bearing account and expended by the grantee within 60 days of receipt; expenditures shall include transfers from the grant account to another grantee account from which the original costs were paid.
5. reimburse to the department at the end of a grant, or as otherwise directed by a department, all un-obligated grant funds or overpayments. Grant funding may not be retained by a grantee at the end of a grant but must be returned to the department and refunded into the account from which funding was originally authorized, or if the account originally authorizing funding has expired, into the General Fund or as otherwise provided by law;
6. return any property or assets funded with grant funds to the department at the end of the grant, or in the alternative, commit under contract to use the assets only for grant purposes after the grant has terminated, which shall be considered a contractual obligation which survives the termination of a contract;
7. inform the department immediately in writing (by letter, email or fax) of all conditions that may negatively affect or are negatively affecting program objectives or performance as soon as known. These conditions included but are not limited to circumstances and problems that prevent the meeting of time schedules and goals or preclude the attainment of project work units within established time periods. The disclosure shall be accompanied by a statement of the action taken or contemplated by the grantee to correct the problems and the time frame within which corrective action will be taken;
8. properly account for all income earned as a result of the provision of grant funding, which shall be returned to the department, used to offset grant approved costs, or towards the cost of additional grant performance consistent with the grant purposes, as authorized by the funding authority and as directed by the department as part of the grant.

### **Records Management**

A department shall maintain a grant file (in accordance with 815 CMR 10.00 and disposal schedules issued by the Secretary of State Records Conservation Board) with complete records of a grant or grant program which shall include, but not be limited to:

- a. grant applications and all documentation related to the distribution, publishing or posting of a grant application;
- b. all documentation related to the award process including justifications or documentation supporting awards;
- c. the original record copies of all contractual documents, grant reports, document approvals (including a **MMARS Document Authorization/Records Management Form** for recording the doc. Id. For MMARS transaction to file with supporting documentation or for Department Head Signature Authorization of the MMARS document) and records of payments.

Grant files may be reviewed by the Office of the Comptroller for quality assurance purposes and shall be subject to audit by the Office of the State Auditor, Inspector General's Office, the Office of the Attorney General and any other entity as authorized in law.

A department is the keeper of the official record copy of the contract and contract/procurement file. MMARS will be the official record copy of the encumbrance and payment documents that will supersede any paper copies of the same. The grant file must contain or refer to the location of all documentation related to a procurement and resulting contract(s). A department is responsible for retaining and archiving grant records in accordance with the disposal schedules issued by the Secretary of State Records Conservation Board.

See Policy "Contracts – Records Management".

### **Internal Controls**

Departments shall develop internal control procedures to ensure that grants are disbursed in accordance with 815 CMR 2.00, Comptroller policies and procedures and other requirements of law. Departments granting federal funds must ensure appropriate grantee (subrecipient) monitoring to ensure that funds are spent in accordance with the federal grant award, as specified in OMB Circular A-133.

See Policy - Internal Controls – Sub-recipient Monitoring, Contracts – Internal Controls for Purchasing, Procurement and Contracting, Internal Controls – Internal Control Guide, Internal Control Guide for Managers.

### **Quality Assurance**

The Office of the Comptroller will interpret 815 CMR 2.00 and take any actions necessary to carry out the purposes of 815 CMR 2.00, including issuing additional policies, procedures and forms for department use. The Office of the Comptroller may review any grants disbursed by a department to ensure compliance with 815 CMR 2.00, Comptroller policies and procedures and other requirements of law. Grant disbursement performance will be a consideration when determining the award, modification or termination of a department's transaction delegation.

See Policy "Contracts – Quality Assurance".

### **Information Sources**

- Related Procedure – under construction
- Related Policies:
  - Contracts - State Finance Law and General Contract Requirements
  - Department Head Signature Authorization
  - Electronic Signature for MMARS Documents
  - Contracts - Contractor Authorized Signatory Listing

- Accounts Payable – W-9 and Vendor Registration
- Accounts Payable – Commonwealth Bill Paying Policy
- Internal Controls – Subrecipient Monitoring
- Contracts – Internal Controls for Purchasing, Procurement and Contracting
- Internal Controls – Internal Control Guide, Internal Control Guide for Managers
- Contract - Delegation of MMARS Document Processing
- Contracts - Retainage Policy
- Contracts – Amendments, Suspensions and Terminations
- Contract – Records Management
  
- Legal Authority:
- 
- [815 CMR 2.00](#) (Grants and Subsidies); Appropriation language for individual grant;
- [M.G.L. c. 7A](#) (Office of the Comptroller); St. 1986, c. 206, § 17 (Authority for Grants);
- [M.G.L. c. 29](#) (State Finance Law)
  
- Attachments/Forms –
  - [Quick Reference – State Grants and Federal Subgrants](#)
  - [Quick Reference – Goods and Services, Grants, Subsidies, ISAs and Chargebacks](#)
  - [Commonwealth Terms and Conditions Form](#)
  - [Commonwealth Standard Contract Form](#)
  - [Electronic Funds Transfer \(EFT\) form](#)
  - [Contractor Authorized Signatory Listing Form](#)
  - [IRS Form W-9](#) (if not listed as vendor in the MMARS Vendor Customer file)
  - [MMARS Document Authorization/Records Management Form](#)
  
- Links –
  - [Comm-PASS](#)
  - [OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations](#)
  - [OMB Circular A-87 - Cost Principles for State, Local, and Indian Tribal Governments](#)
  - [OMB Circular A-102 - grants and Cooperative Agreements with State and Local Governments](#)
  - [OMB Circular A-110 - Uniform Administrative Requirements for grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations](#)
  - [OMB Circular A-122 - Cost Principles for Non-Profit Organizations](#)
  
- Contacts - [CTR Help Desk](#)

**November 1, 2006** – Removed language referencing Knowledge Center and updated relevant links to Mass.gov/osc portal site.